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DOCKET NO.: CC-3397/4772US4

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Brifcani, et al.

Confirmation No.: 1866

Application No.: 10/024,862

Group Art Unit: 3725

Filing Date: December 18, 2001

Examiner: Hong, William

For: CAN END AND METHOD FOR FIXING SAME TO A CAN BODY

DATE OF DEPOSIT:

May 4, 2004

I HEREBY CERTIFY THAT THIS PAPER IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL, POSTAGE PREPAID, ON THE DATE INDICATED ABOVE AND IS ADDRESSED TO THE UNITED STATES PATENT AND TRADEMARK OFFICE, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.

TYPED NAME: Harold H. Fullmer
REGISTRATION NO.: 42,560

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Pursuant to 37 CFR § 1.56 and in accordance with 37 CFR §§ 1.97-1.98, information relating to the above-identified application is hereby disclosed. Inclusion of information in this statement is not to be construed as an admission that this information is material as that term is defined in 37 CFR § 1.56(b).

☐ In accordance with § 1.97(b), since this Information Disclosure Statement is being filed either within three months of the filing date of the above-identified application, within three months of the date of entry into the national stage of the above identified application as set forth in § 1.491, before the mailing date

of a first Office Action on the merits of the above-identified application, or before the mailing date of a first Office Action after the filing of request for continued examination under § 1.114, no additional fee is required.

☐ In accordance with § 1.129(a), this Information Disclosure Statement is being filed in connection with ☐ the first or ☐ second After Final Submission, therefore:

☐ Certification in Accordance with § 1.97(e) is attached; or

☐ The fee of **\$180.00** as set forth in § 1.17(p) is attached.

☒ In accordance with § 1.97(c), this Information Disclosure Statement is being filed after the period set forth in § 1.97(b) above but before the mailing date of either a Final Action under § 1.113 or a Notice of Allowance under § 1.311, or before an action that otherwise closes prosecution in the application, therefore:

☐ Certification in Accordance with § 1.97(e) is attached;
or

☒ The fee of **\$180.00** as set forth in § 1.17(p) is attached.

☐ In accordance with § 1.97(d), this Information Disclosure Statement is being filed after the mailing date of either a Final Action under § 1.113 or a Notice of Allowance under § 1.311 but before, or simultaneously with, the payment of the Issue Fee, therefore included are: Certification in Accordance with § 1.97(e); and the submission fee of **\$180.00** as set forth in § 1.17(p).

- ☒ Copies of each of the references listed on the attached Form PTO-1449 are enclosed herewith.
- ☐ Copies of references listed on the attached Form PTO-1449 are enclosed herewith
- ☐ Copies of references listed on the attached Form PTO 1449 are not required to be submitted pursuant to the June 30, 2003 recent revisions to 37 CFR § 1.98(a)(2)(i).

EXCEPT THAT:

- ☐ In view of the voluminous nature of references [list as appropriate], and the likelihood that these references are available to the Examiner, copies are not enclosed herewith.
- ☐ In accordance with § 1.98(d), copies of the following references listed on the attached Form PTO-1449 are not enclosed herewith because they were previously cited by or submitted to the U.S. Patent and Trademark Office in patent application(s) for which a claim for priority under 35 U.S.C. § 120 have been made in the instant application:
- ☐ Copies of references [list as appropriate] listed on the attached Form PTO-1449 were previously cited by or submitted to the Patent and Trademark Office in prior Application No.

, filed .

Please charge any deficiency or credit any overpayment to Deposit Account No. 23-3050. This form is submitted in duplicate.

There are no listed references which are not in the English language.



Applicants hereby disclose the existence of a patent infringement litigation in which United States Patent Number 6,065,634 ("the 634 patent"), to which the present application claims priority through intermediate continuation applications, is at issue. Design patents D406,236 and D448,666 (the "design patents") are also at issue in the suit. The 634 patent has claims drawn to an apparatus – specifically, a *can end* -- rather than to a *method for seaming* as in the present application.

In the litigation, filed March 24, 2003 in United States District Court for the Western District of Wisconsin (Anheuser-Busch Companies, Inc v. Crown Cork & Seal Company, Civil Action Number 03-C-0137-S), the declaratory judgment plaintiffs have asserted non-infringement and invalidity of the 634 and design patents. The district court found that the accused product did not infringe the claims of the 634 patent, but did not decide the issue of validity of the 634 patent. A copy of the district court's opinion is provided herein.


Applicants enclose plaintiffs' Response to Interrogatory No. 2 of Plaintiffs' Responses and Objections to Defendants' First Set of Interrogatories in the litigation. Interrogatory No. 2 requested "the factual basis for Plaintiffs' allegation that any of the patents-in-suit are invalid." Accordingly, Plaintiffs' Response sets forth its arguments against the validity of the 634 (apparatus) patent. The prior art on which the answer based its claim of invalidity (and/or non-infringement) of the 634 and design patents is Japanese Unexamined Utility Model Application No. 57-117323 (the "JP reference") and United States Patent Numbers 4,217,843 ("Kraska") and 4,716,755 ("Bulso") -- each of which has already been submitted in the present application in the Information Disclosure Statement filed October 11, 2002.

Applicants submit the enclosed documents and information to meet their duty of disclosure with respect to notifying the United States Patent and Trademark Office of the above litigation.

Also, an EP patent that claims priority to the same priority documents as the present application was the subject of an opposition proceeding before the EPO. The issues in the EPO proceeding, which has been decided and is now on appeal, include (but are not limited to) whether the JP reference discloses only the seamed can end without clear indication of the conformation of the can end before seaming. The EPO opposition board, after a hearing, determined that the JP reference provides only information about a seamed can end and the configuration of a can end is different before and after seaming. Applicants herein submit the documents that were submitted to the EPO by both the opponent and owner of the EP patent in the opposition proceeding.

If the Examiner determines that additional information relating to the above litigation (for example, pleadings, and/or other answers to interrogatories setting forth attorney arguments in the U.S. litigation, such as those relating to non-infringement) or the above EPO opposition proceeding is required to satisfy the duty of disclosure or would be helpful to the prosecution of this case, he is invited to contact the undersigned at his convenience.

Date:

May 4, 2004

Harold H. Fullmer
Registration No. 42,560

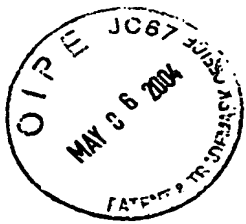
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Form PTO-1449 Modified List of Patent and Publications Cited by Applicant (Use several sheets if necessary) U.S. Department of Commerce Patent and Trademark Office	Docket No. CC-3397/4772US4		Application No. 10/024,862	
	Applicant Brifcani, et al.			
	Filing Date December 18, 2001		Group 3725	
	Confirmation No. 1866			
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)				
	64	Notice of Opposition to a European Patent 96908205.6/828,663 Opposed by American National Can Company (Facts and Arguments), December 12, 1999 , 21 pages		
	65	Letter From Ismay Ratliff Of Crown Cork & Seal To EPO, April 19, 2001 , One Page, Enclosing Patentee's Observations And Amendments In Response To The Opposition, 9 pages, and Summary of Main and Auxiliary Requests, Main Request, and Auxiliary Requests 1, 2, and 3, 14 pages		
	66	Letter From PRB Lawrence Of Gill Jennings & Every To EPO, November 6, 2001 , Nine Pages, Beginning, "The opponent notes that the patentee has not responded to the detailed argumentation" with three pages of graphics and with EPO Cover Page dated November 15, 2001.		
	67	Letter From PRB Lawrence Of Gill Jennings & Every To EPO, November 27, 2001 , Two Pages, beginning, "I refer to the final paragraph of page 9 of my comments of 6 th November and" with three page attachment having graphics and with EPO Cover Page dated December 5, 2001 .		
	68	Letter from Ismay Ratliff of Crown Cork & Seal to EPO, November 28, 2001 , One Page, beginning, "I refer to the letter from the Opponent of 6 th November 2001"		
	69	Letter From PRB Lawrence Of Gill Jennings & Every To EPO, December 11, 2001 , One Page, Beginning "I not the patentee's comments of 28th November."		
	70	Letter from Ismay Ratliff of Crown Cork & Seal to EPO, January 18, 2002 , One Page, beginning, "I refer to the communications of 15 th November 2001, 5 th December 2001, 7 th January 2002"		
	71	Letter from Ismay Ratliff of Crown Cork & Seal to EPO, March 18, 2002 , Three Pages, beginning "Further to my letter of 18 th January 2002, I enclose further submissions in response to the Opponent's letters of 15 th November, 27 th November, and 11 th December 2001" with 10 pages of claims including Main Request, Auxiliary Request, and Auxiliary Request 2.		
EXAMINER		DATE CONSIDERED		



Form PTO-1449 Modified List of Patent and Publications Cited by Applicant (Use several sheets if necessary) U.S. Department of Commerce Patent and Trademark Office		Docket No. CC-3397/4772US4	Application No. 10/024,862
		Applicant Brifcani, et al.	
		Filing Date December 18, 2001	Group 3725
		Confirmation No. 1866	
OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)			
	72	Letter From PRB Lawrence Of Gill Jennings & Every To EPO, May 2, 2002 , 7 Pages, Beginning, "I maintain all the objections in the original opposition and in the submission of the 6 th and 27 th November 2001" with cover page from EPO dated May 16, 2002 .	
	73	Letter from Ismay Ratliff of Crown Cork & Seal to EPO, July 4, 2002 , Four Pages, Beginning, "This is in response to the Opponents' further submissions dated 2 nd May 2002."	
	74	Summons to Attend Oral Proceedings Pursuant to Rule 71(1) EPC, October 21, 2002 , 7 pages	
	75	Letter from PRB Lawrence of Gill Jennings & Every, June 24, 2002 , with Affidavit of Thomas T. Tung with Attachments A thru D, June 14, 2002	
	76	Letter from PRB Lawrence of Gill Jennings & Every, July 19, 2002 , with Extracts of the Pechiney Annual Report 1989 , 5 pages, Triangle Industries, Inc., Annual Report, 1987 , 2 pages	
	77	Final submission by the EP patentee in the EPO opposition proceeding: European Patent Application No 96908205.6 (now European Patent No 0 828 663), CarnaudMetalbox Plc, Opposition by American National Can Company, (Copy), February 11, 2003 , with Attachments, 38 pages	
	78	Final submissions by the EP opponent in the EPO opposition proceeding: European Patent Application No 96908205.6-2308/0828663, CarnaudMetalbox Plc, (Copy), February 18, 2003 , with Attachments, Affidavit by John Davy, Statement of Facts of John Zappa, 53 pages.	
	79	Letter From PRB Lawrence Of Gill Jennings & Every To EPO, February 19, 2003 , One Page, beginning, "There are two points supplementary to my letter of 18 February"	
	80	Letter From PRB Lawrence Of Gill Jennings & Every To EPO, February 20, 2003 , Two Pages, Beginning "We Have Been Considering Further The Recent Assertion By The Patentee About The Alleged Non-Enabling Nature"	
	81	Interlocutory Decision of the Opposition Division of the European Patent Office in Respect of the EP Patent Number 0828663, (Copy), May 5, 2003 , 25 pages	



	82	Grounds of Appeal against the Interlocutory Decision by the Opposition Division, (Copy), filed by EP patentee, September 2, 2003 , European Patent No 0 828 663 (Formerly European Patent Application No 96908205.6) CarnaudMetalbox Plc and CarnaudMetalbox SA Appeal against the Interlocutory Decision of the Opposition Division, May 5, 2003, with attached copies of Main Request, and Auxiliary Request 1 thru 8, 32 pages.
	83	Grounds of Appeal against the Interlocutory Decision by the Opposition Division, (Confirmation), filed by EP opponent, September 12, 2003 , with attachments including graphics and English translation of JP-U57-117323 and Technical Statement of Facts of Bill Hartman in Opposition to EP 828 663, with attachments, Technical Statement by Dean Scranton, Technical Statement of Facts of Christopher Sjostrom in Opposition to EP 828 663, Technical Statement by Gary Smith for Opposition to EP 828 663, Technical Statement by Timothy L. Turner, 57 pages
	84	Plaintiffs' Responses and Objections to Defendants' First Set of Interrogatories; Civil Action No. 03-C-0137-S; Interrogatory No. 2; pages 1, 9, 10, and 11. (Pages 1 and 11 are redacted); dated June 16, 2003 .
	85	Opinion of the Unites States District Court for the Western District of Wisconsin in Anheuser-Busch Companies, Inc. v. Crown Cork & Seal Co., Inc.; Case Number 03-C-137-S; dated November 20, 2003 , 35 pages
EXAMINER		DATE CONSIDERED